

In the Matter of Remedial Action by:)
)
) AGREED ORDER
Douglas Management Company)
(at the R.G. Haley International Site)) No. DE_____
)
)

Jurisdiction

II.

3. The "Site" (or "the Facility") is generally the former R.G. Haley wood treating site including the adjacent aquatic lands owned by the State of Washington and managed by the State Department of Natural Resources. The Site is

located in Bellingham, Washington and is approximately six acres in size and is bounded by Pine Street, Alder Street, Burlington Northern Santa Fe Railroad tracks, and Bellingham Bay. The Site is further described in the Site Map (attached to this Order as Exhibit 1).

4. From the mid-1800's to the mid-1900's, the Site hosted a variety of activities including lumber, coal and wharf operations. During this time period a portion of the State-owned aquatic lands at the Site were filled. The State retained title to these filled lands, as well as the unfilled adjacent aquatic lands, and the Department of Natural Resources manages the lands.

5. In 1947, the Port of Bellingham acquired the Site, including the Harbor Area Lease and the ownership of improvements within the harbor area. From 1948 through 1955, the Port of Bellingham leased the uplands properties on the Site between Alder and Pine north and east of the extended Cornwall Avenue to the International Crossarm Manufacturing Company. In 1955, the Port of Bellingham transferred this lease to R.G. Haley International Corporation.

6. In 1962, the Port of Bellingham sold the upland properties on the Site between Alder and Pine Street to R.G. Haley International Company.

7. Since the 1920's, Brooks Lumber Company and Frank Brooks Manufacturing Company have operated on a portion of the Site.

8. From 1965 to 1976, Frank Brooks Manufacturing Company held the Harbor Area Lease to the filled State-owned aquatic lands on the Site. That harbor area is currently leased to Georgia Pacific Corp.

9. Wood treating activities were performed on the Site by various companies from before 1951 to 1985. Chlorinated organic chemicals have been used in the wood preserving industry since the 1930's. When operational, the Site structures consisted of a finishing building where lumber was milled, a kiln building, a retort, two aboveground storage tanks (ASTs), one underground storage tank (UST), a control room, and two drying sheds. With the exception of the smaller drying shed, the on-site structures have been present at the Site since the early 1950's.

10. Wood treating operations at the Site were performed using pentachlorophenol (PCP) in carrier oil. Wood was dried in the kiln building before treatment. Following drying, the wood was placed in a retort where treating solutions were applied to the wood. Evidence indicates that the filled State-owned aquatic lands were used by R.G. Haley International Co. and possibly others

throughout the operational life of the wood treating facilities.

11. No wood treating activities have been performed at the Site since 1985. Douglas Management Company purchased the R.G. Haley facility in 1990.

12. In studies dated December 12, 2001 and May 20, 2002 (associated with the Interim Cleanup Action), releases of petroleum hydrocarbons and contaminants associated with wood treatment operations were documented at the Site. Specifically, an oil seep was observed discharging to Bellingham Bay from the shoreline along the northern boundary of the Site. Additional site assessment identified the presence of a floating petroleum hydrocarbon plume immediately inland from the oil seep. Site studies had identified the presence of contaminants that are typically associated with wood treatment operations. The primary chemicals of concern include pentachlorophenol (PCP), diesel-end heavy oil-range hydrocarbons, dioxins, furans, and polycyclic aromatic hydrocarbons (PAHs).

13. Because of the ongoing release of contaminants into adjacent surface waters, between December 2001 and April 2002, Douglas Management Company installed at the Site a product recovery system. This interim cleanup action included the following:

- 1) Construction of a sheet pile barrier and associated impermeable liner and oil collection trench.
- 2) Installation of oil recovery wells and associated oil recovery equipment.
- 3) Limited removal of oil contaminated sediment near the location of an oil seep in the intertidal zone.
- 4) Construction of shoreline erosion protection measures.
- 5) Installation of additional monitoring wells to evaluate location and thickness of the floating oil plume.
- 6) Site monitoring activities - generally weekly with the goal to stop discharge of oil from the site to Bellingham Bay and to inhibit future erosion of the shoreline into the portion of the Site where a plume of oil is present on the water table.

III.

Ecology Determinations

1. Douglas Management Company is an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

2. The Facility is known as the R. G. Haley International Site and is located at 500 Cornwall Avenue in Bellingham, Washington.

3. The substances found at the Facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7), and as indicated in the documents titled Interim Cleanup Action Plan, and Interim Cleanup Action Report, Former R. G. Haley International Wood Treating/DNR Property Site, Bellingham, Washington, Dated July 6, 2000 and May 20, 2002, by GeoEngineers.

4. Based on the presence of these hazardous substances at the Facility and all factors known to the Department, there is a release of hazardous substances from the Facility, as defined at RCW 70.105D.020(20).

5. By letter dated November 14, 2000, Ecology notified Douglas Management Company of its status as a "potentially liable person" under RCW 70.105D.020(16) and RCW 70.105D.040 with regard to the above-described Facility.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. The presence of pentachlorophenol (PCP),

diesel-end heavy oil-range hydrocarbons, dioxins, furans, and polycyclic aromatic hydrocarbons (PAHs) require remedial action at the Site.

7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Douglas Management Company take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Prepare an Uplands Remedial Investigation of the Site in accordance with the attached Uplands Work Plan (attached as Exhibit 2). The attached Uplands Work Plan, and all other attachments to this Order, are integral and enforceable parts of the Order.

2. Submit a Sediments Work Plan for a Sediments Remedial Investigation to Ecology, consistent with the attached Sediments Scope of Work (attached as Exhibit 3), within 120 days of the effective date of this Order.

3. Prepare a Feasibility Study addressing both the Uplands Remedial Investigation and the Sediments Remedial

Investigation. The Feasibility Study will be prepared in accordance with a Feasibility Study Work Plan that will be prepared consistent with the attached Feasibility Study Scope of Work (attached as Exhibit 4).

4. Schedule of Work The schedule of performance of the work identified and expected deliverables is described in the attached Schedule (attached as Exhibit 5).

5. Progress Reports Progress Reports shall be submitted as provided in the attached Scopes of Work.

6. Sampling and Analysis Plan Douglas Management shall prepare a Sampling and Analysis Plan (SAP) for the Uplands Remedial Investigation sampling and analysis activities in accordance with WAC 173-340-820. The SAP shall describe the sampling objectives and the rationale for the sampling approach. A detailed description of sampling tasks shall be provided. The SAP shall be an attachment of the Uplands Remedial Investigation Work Plan.

7. Quality Assurance Project Plan Douglas Management shall prepare a Quality Assurance Project Plan (QAPP) for the Uplands Remedial Investigation sampling and analysis activities. The QAPP shall identify and describe measures that will be undertaken during the performance of all sampling and analysis tasks to ensure the fulfillment of data quality objectives. The QAPP shall be developed in

accordance with WAC 173-340-830 and Ecology guidance and shall be an attachment to the Uplands Remedial Investigation Work Plan.

8. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to the attached GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS.

These submittals shall be provided to Ecology as required under the schedule established in paragraph 2, above.

v.

Terms and Conditions of Order

1. Definitions Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect. If Ecology does modify or withdraw any provisions of this Order, Douglas Management Company is not bound by the provisions of this Order.

3. Remedial Action Costs Douglas Management Company shall pay to Ecology costs incurred pursuant to WAC 173-340-550 by Ecology related to this Order. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Douglas Management Company shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided. Itemized statements shall be prepared quarterly.

Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges, calculated at 12 percent per annum, compounded monthly.

4. Designated Project Coordinators

The project coordinator for Ecology is:

| | |
|----------|---------------------------------------------------------------------------------------------------------|
| Name: | Glynis A. Carrosino |
| Address: | Washington State Department of Ecology 3190 160 th Avenue S.E. Bellevue, WA 98008-5452 |
| Phone: | (425) 649-7263 |
| FAX: | (425) 649-7098 |
| e-mail: | gcar461@ecy.wa.gov |

The project coordinator for Douglas Management Company
is:

Name: Everett H. Billingslea
Address: Douglas Management Company
P.O. Box 3757
Seattle, WA 98124-3757
Phone: (206) 439-5490
FAX: (206) 243-8415
e-mail: ehb@Lynden.com

Notices sent to Douglas Management Company should also
be sent to:

Name: Stephen C. Woodward
Address: GeoEngineers, Inc.
Plaza 600 Building
600 Steward Street, Suite 1420
Seattle, WA 98101
Phone: (206) 728-2674
FAX: (206) 728-2732
e-mail: swoodward@geoengineers.com

The project coordinator(s) shall be responsible for
overseeing the implementation of this Order. To the maximum
extent possible, communications between Ecology and Douglas
Management Company, and all documents, including reports,
approvals and other correspondence concerning the activities
performed pursuant to the terms and conditions of this Order
shall be directed through the project coordinator(s).
Should Ecology or Douglas Management Company change project
coordinator(s), written notification shall be provided to
Ecology or Douglas Management Company at least ten (10)
calendar days prior to the change.

5. Performance All work performed pursuant to this
Order shall be under the direction and supervision, as
AGREED ORDER

necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Douglas Management Company shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. Douglas Management Company shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Douglas Management Company shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms

of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Douglas Management Company. By signing this Agreed Order, Douglas Management Company agrees that this Order constitutes reasonable notice of access, and agrees to allow Ecology and its authorized representatives access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Douglas Management Company during an inspection, and, except during unannounced inspections, shall provide two (2) days notice before any sampling activity. Douglas Management Company shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation Douglas Management Company shall prepare and/or update a public participation plan for this Order. Ecology shall maintain the responsibility for public participation at the Site. Douglas Management Company shall help Ecology coordinate and implement public participation for this Order.

8. Retention of Records Douglas Management Company shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Douglas Management Company, then Douglas Management Company agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution Douglas Management Company may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. Douglas Management Company is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not

to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Douglas Management Company to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Douglas Management Company to require those remedial actions required by this Agreed Order, provided Douglas Management Company complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Site. In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Douglas Management Company to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site

shall be consummated by Douglas Management Company without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest Douglas Management Company may have in the Site or any portions thereof, Douglas Management Company shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Douglas Management Company shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

A. All actions carried out by Douglas Management Company pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), Douglas Management Company shall determine the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order. Douglas Management Company shall promptly consult

with the appropriate state and/or local agencies. Written documentation from those agencies of the substantive requirements applicable to the remedial investigation and feasibility study shall be included in the RI/FS Report, and are binding and enforceable requirements of the Order.

Douglas Management Company has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Douglas Management Company determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Douglas Management Company shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Douglas Management Company shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Douglas Management Company and on how Douglas Management Company must meet those

requirements. Ecology shall inform Douglas Management Company in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Douglas Management Company shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and Douglas Management Company shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

Satisfaction of this Order

Douglas Management Company shall submit a written certification to Ecology upon completion of its obligations under this Order, that it has completed the remedial investigation required by this Order and all provisions of this Order have been complied with. Upon Ecology's review and approval of the written certification, Ecology shall send Douglas Management Company a written notification that the provisions of this Order, including all exhibits and modifications hereto, have been satisfied and complied with.

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event Douglas Management Company refuses, without sufficient cause, to comply with

any term of this Order, Douglas Management Company will be liable for:

- 1) Up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- 2) Civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order:_____

Douglas Management Company

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

By_____

By_____

cc: TCP, Cost Recovery Coordinator